No. 265

In the Supreme Court of the United States

OCTOBER TERM, 1942

CLYDE-MALLORY LINES, PETITIONER

v.

STEAMSHIP "EGLANTINE" AND THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the district court (R. 44–49) is reported in 38 F. Supp. 658. The opinion of the circuit court of appeals (R. 54–57) is reported in 127 F. (2d) 569.

JURISDICTION

The judgment of the circuit court of appeals (R. 58) was entered on April 29, 1942. A petition for rehearing was denied June 2, 1942 (R. 60). The petition for a writ of certiorari was filed on July 29, 1942, and was granted on October

12, 1942 (R. 61). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a libel *in rem* may be maintained against a privately owned vessel, for a collision occurring while the vessel was owned by, and operated as a merchant vessel of, the United States.

2. If so, whether Section 5 of the Suits in Admiralty Act requires that such a libel be brought within two years after the cause of action arises.

STATUTES INVOLVED

Section 9 of the Shipping Act of 1916 (39 Stat. 728, 730), Section 18 of the Merchant Marine Act of 1920 (41 Stat. 988, 994, 46 U. S. C. § 808), and the Suits in Admiralty Act of 1920 (41 Stat. 525–528, 46 U. S. C. §§ 741–752) are set forth in Appendix A, pp. 32–43, *infra*.

STATEMENT

This case arises out of a collision on December 21, 1932, between the Steamship *Brazos*, owned by petitioner, and the Steamship *Eglantine*, which was owned at the time of the collision by the United States and operated as a merchant vessel. In limitation of liability proceedings brought by the petitioner before the commencement of the present case it was determined that the collision

was caused by mutual fault, and the damages were fixed at $34,280.93 to the *Brazos* and $26,621.07 to the *Eglantine* (R. 2–3, 18–19, 33–36, 37–39). Between the date of the collision and the commencement of the present suit the United States sold the *Eglantine* (R. 1–2).[1]

The present suit was commenced by an ordinary libel *in rem* filed against the *Eglantine* on June 10, 1937, four and one-half years after the collision, to recover one-half the difference between the damages to the *Brazos* and the damages to the *Eglantine* (R. 1); and on the same day an admiralty warrant for attachment issued and the marshal seized the vessel (R. 4–5). On the same day the United States, under Section 4 of the Suits in Admiralty Act (46 U. S. C. 744), filed its suggestion for the release of the vessel, reserving the benefit of all exemptions and defenses (R. 5–7). Thereupon, the *Eglantine* was released (R. 7).

By appropriate pleadings the United States raised three defenses: (1) that petitioner could not attempt to impose lien liability upon the *Eglantine* for any incident which occurred while the vessel was owned and operated by the United States; (2) that petitioner's claim was barred by the two-year limitation established by Section 5 of

[1] The record does not show the precise date of the sale. In fact, it occurred on April 13, 1933.

the Suits in Admiralty Act, and (3) that the claim was barred by laches (R. 9, 12–13).[2]

All three defenses were overruled by the district court and a decree was entered awarding petitioner one-half the difference between the damages suffered by the *Brazos* and the damages suffered by the *Eglantine*. In its opinion the district court held on the authority of *The Bascobal*, 295 Fed. 299 (C. C. A. 5), that the two-year period of limitations did not bar the suit because "it is a suit in rem against a vessel privately owned" (R. 46). The district court also held that the defense of laches was insufficient because the petitioner had proceeded promptly

[2] The issues were raised in the following manner: To the libel *in rem* (R. 1–4) the United States filed an exception on the ground that the libel showed on its face that it was not filed in accordance with Section 5 of the Suits in Admiralty Act (R. 8). The exception was overruled (R. 8–9). The United States, reserving all rights stated in its exception, then filed an answer pleading the three defenses summarized above (R. 12–13). The petitioner filed exceptions to the answer (R. 16–17) but the exceptions were not acted on by the district court until the final hearing. A stipulation of facts was then filed (R. 18–19). To it were attached the petition for limitation of liability filed by petitioner as owner of the *Brazos* in the Southern District of New York (Exh. A, R. 20–25), the claim and answer by the United States as owner of the *Eglantine* (Exh. B, C, R. 25–29), the interlocutory decree of the District Court for the Southern District of New York holding both vessels at fault for the collision (Exh. D, R. 29–33) and the final decree of that court upon a stipulation as to the amount of damages suffered by both vessels (Exh. E, R. 33–36).

to determine the issue of liability in the limitation of liability proceeding (R. 47–48).

On appeal the circuit of appeals reversed the decree of the district court on the ground that the two-year limitation prescribed by Section 5 of the Suits in Admiralty Act controlled, expressly refusing to follow its prior decision in *The Bascobal, supra* (R. 54–57). Judge Hutcheson dissented (R. 57).

SUMMARY OF ARGUMENT

I

It is settled by the decisions of this Court that a vessel is not liable *in rem* for torts committed by her while she was owned or operated by the United States. *The Western Maid,* 257 U. S. 419. Merchant vessels of the sovereign enjoy the same immunity. *Berizzi Brothers Company* v. *Steamship Pesaro,* 271 U. S. 562. Petitioner does not contest this principle but urges that the United States has waived this sovereign immunity in the case of its merchant vessels.

Under Section 9 of the Shipping Act of 1916 Government merchant vessels were liable to be attached for their torts. Section 9, however, was repealed *pro tanto* by the Suits in Admiralty Act of 1920 which was enacted for the very purpose of ending the expense and inconvenience arising from seizure of Government vessels to satisfy lien liability.

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Section 9 so far as it consented to libels *in rem* against the vessel was not reenacted by the Merchant Marine Act of 1920. Although it used the very words of Section 9, the latter Act must be read harmoniously with the Suits in Admiralty Act and not to nullify its purposes. Petitioner's argument that Section 9 was reenacted with all its original implications was made, and rejected by this Court, in *Johnson* v. *United States Shipping Board Emergency Fleet Corporation*, 280 U. S. 320.

Nor can the necessary legislative license for petitioner's suit be gleaned from Section 4 of the Suits in Admiralty Act. Section 4 was included on the assumption of the draftsman—soon afterwards proved mistaken in *The Western Maid*, 257 U. S. 419—that the acts of a Government vessel gave rise to maritime liens against the vessel which became enforcible after her transfer to a private person. But the mistaken congressional assumption about lien liability should not be construed as a consent to lien liability; indeed such a construction was rejected in *The Western Maid*, 257 U. S. 419. Moreover, Section 4 of the Suits in Admiralty Act cannot be construed to lend any continued vitality to Section 9 of the Shipping Act of 1916, since Section 4 applies to a broader class of vessels than Section 9 and was clearly intended to meet the problem created by *The Siren*,

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7 Wall. 152, rather than the problem created by Section 9.

Even if the plaintiff could properly have asserted its claim by a timely libel *in rem* against the *Eglantine,* the libel in this proceeding should have been dismissed because it was not brought within two years after the cause of action arose, as required by Section 5 of the Suits in Admiralty Act. Although Congress in enacting Section 4 mistakenly assumed that a timely libel would lie, it intended by Section 5 to impose a two-year period of limitation on such suits as well as on suits brought directly against the United States. This intention is clear from the language of the Act and its legislative purpose and history. The present suit is barred by the doctrine laid down in *Johnson* v. *United States Shipping Board Emergency Fleet Corporation,* 280 U. S. 320, as a matter of exclusiveness of right, remedy, and time limitation of the Suits in Admiralty Act.

ARGUMENT

I

THE "EGLANTINE" IS NOT LIABLE *IN REM*

The libel *in rem* against the *Eglantine* clearly cannot be maintained in the absence of statutory sanction. At the time of the collision the vessel was owned by the United States and operated by

it as a merchant vessel. In *The Siren*, 7 Wall. 152, 154, 155, it was held that Government vessels were immune as sovereign property from seizure for *in rem* satisfaction of maritime liens, although the Court suggested that there might be an inchoate lien unenforcible during Government ownership but enforcible after a transfer of the vessel (pp. 155–158). In *The Western Maid*, 257 U. S. 419, however, that suggestion was rejected and the Court held squarely that, in the absence of a waiver of sovereign immunity, a libel *in rem* could not be maintained against a vessel for injuries done by it while owned or chartered and operated by the United States.[3] The English rule is the same. *The Tervaete* [1922] P. 259 (Court of Appeal); *The Sylvan Arrow* [1923], P. 14, 220. And although *The Western Maid* was engaged in the "public service" as distinguished from mercantile pursuits, it is clear that the same full measure of immunity extends to the sover-

[3] The opinion of Mr. Justice Holmes makes it entirely clear that the doctrine expounded in *The Western Maid* is quite distinct from the rule, discussed in *The Siren*, 7 Wall. 152, at 157–159, that *preexisting* liens are unenforcible during the Government's tenure but may later be enforced (*United States* v. *Alabama*, 313 U. S. 274) for he stated (257 U. S. at 432) "The only question really open to debate is whether a liability attached to the ships which although dormant while the United States was in possession became enforcible as soon as the vessels came into hands that could be sued." The distinction was expressly noted in *The Tervaete* [1922] P. 259, 265 (Court of Appeal).

eign's merchant vessels. Cf. *Berizzi Brothers Company* v. *Steamship Pesaro*, 271 U. S. 562; *Compania Espanola De Navegacion Maritima, S. A.* v. *The Navemar*, 303 U. S. 68, 74; *The Tervaete* [1922], P. 197, 198 (Admiralty); 259 (Court of Appeal).[4]

Petitioner does not controvert either the above principles or their applicability to the instant case if no statutory waiver of immunity is made out. Petitioner finds such a waiver in Section 9 of the Shipping Act of 1916. We shall show, however, (1) that Section 9 has been repealed, so far as it waived the immunity of the sovereign's property from liability *in rem*, (2) that no waiver can be spelled out of Section 18 of the Merchant Marine Act of 1920 and (3) that Section 4 of the Suits in Admiralty Act does not constitute such a waiver.

1. SECTION 9 OF THE SHIPPING ACT OF 1916 WAS REPEALED BY THE SUITS IN ADMIRALTY ACT OF 1920

Section 9 of the Shipping Act of 1916 provided in part (39 Stat. 728, 730):

> Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and

[4] The cited cases deal with vessels belonging to a foreign sovereign. The immunities of the United States in domestic courts must be at least as broad, if not broader. Cf. *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 132–136.

> license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. * * *

In *The Lake Monroe*, 250 U. S. 246, the Court held that a vessel documented in the name of the United States and operated by the United States Shipping Board could be libelled *in rem* by virtue of this section.[5]

But Section 9 does not authorize the petitioner's libel. Shortly after the decision in *The Lake Monroe*, *supra*, the Suits in Admiralty Act was reported by the Senate Committee on Commerce for the express purpose of withdrawing the con-

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[5] The fact that the Court relied exclusively on Section 9 supports our contention that in the absence of statute a libel *in rem* cannot be maintained against a government merchant vessel (see pp. 8-9, *supra*). The respondent in opposing the petition for certiorari, had cited, *inter alia*, *The Davis*, 10 Wall. 15, *Long* v. *The Tampico*, 16 Fed. 491 (S. D. N. Y.), and *The Johnson Lighterage Co., No. 24*, 231 Fed. 365 (N. J.), and argued at length that *The Lake Monroe* was liable to arrest and seizure irrespective of the Shipping Act of 1916, because she had been manned, equipped, and supplied by Randall & Company, as agents for the Shipping Board, and was operating for hire under charter by Randall & Company to another private concern, so that the Government was not in the actual possession essential to the exemption of sovereign property against judicial process (Br. in Opposition to Petition in No. 30, Original, October Term, 1918, pp. 11-20).

sent of the United States to the seizure of its vessels. S. Rep. 223, 66th Cong., 1st sess. The committee referred to the decision in *The Lake Monroe, supra,* as creating a situation in which the United States was subject to "unnecessary expense and its vessels to great delays," and explained that the bill met this situation "by providing specifically for suits in personam against the United States and expressly prohibits suits in rem against its merchant vessels" (*id.*, p. 3). See also H. Rep. 497, 66th Cong., 2d sess.; Hearing before the Committee on Commerce, U. S. Senate, 66th Cong., 1st Sess., on S. 2253, p. 7 (letter from the United States Shipping Board, which sponsored the measure, to Chairman Jones, Senate Committee on Commerce); *id.*, at pp. 8–12, 17, 30.

To this end, Section 1 of the Suits in Admiralty Act of 1920 flatly prohibits the arrest or seizure by judicial process, in the United States or its possessions, of any vessels owned, possessed, or operated by the United States or by its wholly owned corporations (other than the Panama Railroad Company); Section 2 permits a libel *in personam* to be brought against the United States or such corporations with respect to vessels employed by them as merchant vessels, in cases where an admiralty proceeding could be maintained if the vessels were privately owned and possessed; Section 3 prescribes the procedure for the litigation of

such libels against the United States; and Section 13 expressly repeals all inconsistent legislation. Manifestly, Congress thereby repealed Section 9 of the Shipping Act of 1916 so far as it subjected sovereign property to liability *in rem*. Plainer language could hardly have been used and the legislative history is unequivocal.[6] Indeed, in *Blamberg Brothers* v. *United States*, 260 U. S. 452, in a passage quoted by petitioner (Br. 6) this Court has already recognized that the purpose was to repeal the authorization of libels *in rem* under Section 9 of the Shipping Act of 1916 (p. 458):

> This act was passed to avoid the embarrassment to which the Government found itself subjected by the Act of September 7, 1916, c. 451, 39 Stat. 728, by the ninth section of which vessels in which the United States had an interest and which were employed as merchant vessels were made liable as such to arrest or seizure for enforcement of

[6] In addition to the citations in the text, *supra*, pp. 11–12, see also the testimony of the bill's draftsman before the House Committee which considered the legislation (Hearing before the Committee on the Judiciary, House of Representatives, 66th Cong., 1st sess., on H. R. 7124, pp. 4–17), and the Congressional debates on the measure. 59 Cong. Rec. 1680, 1686, 3631. As these references indicate, the measure had an additional purpose to extend the *in personam* liability of the United States, in connection with its merchant fleet, to situations in which the vessel would not have been liable *in rem* under Section 9 of the Shipping Act of 1916, in order that the Government might compete on equal terms with private operators for the carriage of the world's commerce. Cf. *Eastern Transportation Company* v. *United States*, 272 U. S. 675, 688 *et seq.*

maritime liens. *The Lake Monroe*, 250 U. S. 246. * * *

2. SECTION 18 OF THE MERCHANT MARINE ACT OF 1920 DOES NOT REINSTATE SECTION 9 OF THE SHIPPING ACT OF 1916 SO AS TO AUTHORIZE LIBELS *IN REM* AGAINST GOVERNMENT VESSELS

Section 18 of the Merchant Marine Act of 1920 included without change the provisions of Section 9 of the Shipping Act of 1916 (39 Stat. 728, 730, as amended, 40 Stat. 900, 41 Stat. 994, 46 U. S. C. 808). But this reenactment must be considered in the light of the Suits in Admiralty Act which had become law only three months previously; and it cannot be supposed that Congress intended so soon to nullify the objective of that statute. The withdrawal of the waiver of sovereign immunity from seizure of its property—which was the accomplishment of the Suits in Admiralty Act—left Section 9 of the Shipping Act in effect to impose upon vessels "purchased, chartered, or leased from the board" many other public and private obligations to passengers, shippers, crew, and other vessels, which are imposed both by common law and by statute, and which after the Suits in Admiralty Act were enforcible only as that Act prescribed. Cf. *Shewan & Sons* v. *United States*, 266 U. S. 108, 112; *Eastern Transportation Company* v. *United States*, 272 U. S. 675, 688–689. The reenactment in Section 18 of the Merchant Marine Act, therefore, has ample meaning without interpreting it to reenact a waiver of the sovereign immunity of Government vessels themselves from

liability *in rem*. And there is no more reason to suppose that Congress intended to make the waiver in the case of a vessel like the *Eglantine* than there is for holding that it intended to revive *The Lake Monroe*.

In *Johnson* v. *United States Shipping Board Emergency Fleet Corporation*, 280 U. S. 320, moreover, the Court rejected an argument very similar to that which petitioner makes. Section 33 of the Merchant Marine Act of 1920 provided that "any seamen who shall suffer personal injury, in the course of his employment may * * * maintain an action for damages at law, with the right of trial by jury" (41 Stat. 988, 1007, 46 U. S. C. 688). The seamen brought actions at law against the Fleet Corporation pointing to the generality of this language and emphasizing, as petitioner does in the instant case, that Section 18 of the Merchant Marine Act reenacted Section 9 of the Shipping Act of 1916 (Br. for petitioner Johnson and respondent Lustgarten, Nos. 5 and 32, October Term, 1929, pp. 34–37, 40–42). They also argued that this contention should prevail because the actions before the Court did not impede the purpose of the Suits in Admiralty Act to eliminate the expense caused by seizure of Government vessels (*Id.* at 42). The Court rejected the contention, saying (p. 327):

> We conclude that the remedies given by the [Suits in Admiralty] Act are exclusive in all cases where a libel might be filed under it. * * *

In the instant case it is even clearer that the remedy under the Suits in Admiralty Act is exclusive. In the *Johnson* case the actions were *in personam* but were at law; in the instant case the petitioner sought to proceed *in rem* against the vessel in reliance upon an alleged waiver of sovereign immunity, notwithstanding that the purpose of the Act was to prevent such arrest and seizure. Every consideration which impelled the decision in the *Johnson* case, therefore, applies with greater force to the present controversy.

3. SECTION 4 OF THE SUITS IN ADMIRALTY ACT DOES NOT WAIVE THE EGLANTINE'S IMMUNITY FROM *IN REM* LIABILITY

The only remaining statute which can be urged to be a waiver of the Eglantine's sovereign immunity from liability *in rem* is Section 4 of the Suits in Admiralty Act, which provides (41 Stat. 525, 526, 46 U. S. C. 744):

> if a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen from previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States * * * that it is interested in such cause, desires such release, and assumes the liability * * * and thereafter such cause shall proceed

against the United States in accordance with the provisions of this Act.

When Section 4 was enacted, *The Western Maid*, 257 U. S. 419, had not been decided and the prevailing view, based upon certain language in *The Siren*, 7 Wall. 152, was that the torts of a Government vessel gave rise to an inchoate lien liability which became enforcible against the vessel after transfer by the sovereign. Section 4 takes account of this possibility. But it is plain that the section does not affirmatively create any lien liability by a waiver of sovereign immunity. Section 4 provides that if such a vessel is attached, the United States may at once obtain her release by assuming the liability; but it does not authorize the attachment. The evident purpose was to enable the United States to substitute its liability *in personam* for any liability *in rem* to which the vessel might be subject and that purpose is wholly inconsistent with an intent to waive any sovereign immunity which might exist. Thus, Section 4 left the question of lien liability precisely as it found it.

This interpretation of Section 4 is confirmed by its legislative history. The draftsman testified before the Senate Committee on Commerce. He referred to *The Siren* and described how under that decision a vessel formerly operated by the United States as a naval auxiliary had been libelled for damages done while she was operated by the United States, forcing the owner to give

a surety bond for the vessel's release and thereby adding the cost of the bond to the ultimate expense to be paid by the United States when the owner claimed indemnity. The draftsman then explained (Hearing before the Committee on Commerce, United States Senate, 66th Cong., 1st sess., on S. 2253, pp. 17–18):

> This section is designed to meet that situation.[3]

The purpose of Section 4, therefore, was to minimize the financial burden on the Government resulting from the inchoate lien liability which was mistakenly thought to exist for damage done by a Government vessel. To construe Section 4 to authorize a libel *in rem* against the vessel, such as petitioner's, would invert the provision to the financial disadvantage of the Government by reducing the selling value of its vessels (cf. *Plamals* v. *Pinar Del Rio*, 277 U. S. 151, 157; *The Caddo*, 285 Fed. 643, 644 (S. D. N. Y.); *The Tervaete* [1922] P. 259, 266, 271–272 (Court of Appeal).[4] The burden would be very heavy in

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[3] The pertinent portions of the testimony, summarized in the text, are set forth in full in Appendix B, pp. 43–46, *infra*.

[4] Section 4 was designed to permit merely the optional filing of a suggestion (see Hearing before the Committee on Commerce, United States Senate, 66th Cong., 1st sess., on S. 2253, p. 18; 59 Cong. Rec. 1756; cf. *The Caddo*, 285 Fed. 643, 645 (S. D. N. Y.)), a fact which would still further reduce the selling value if the libel *in rem* could be asserted.

The rejection of lien liability under the circumstances here involved would also promote the accomplishment of

periods during which the Government was disposing of the great numbers of vessels acquired during wartime.

The decision in *The Western Maid*, moreover, is a controlling precedent that no lien liability attached to the *Eglantine* in the instant case notwithstanding the provisions of Section 4. Under

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the exclusiveness of remedy and the uniformity of administration under the Suits in Admiralty Act, the importance of which was stressed in *Johnson* v. *United States Shipping Board Emergency Fleet Corporation*, 280 U. S. 320, 326–327, and *Fleet Corp.* v. *Rosenberg Bros.*, 276 U. S. 202, 213. The rejection of such liability would require all suits against the Government and the affected corporations, arising out of their operation of merchant vessels, to begin and proceed directly in the manner basically intended by the statute. It would also avoid the possibility of double litigation which would exist, if such lien liability were to be recognized, where the Government has transferred a vessel with a warranty of unencumbered title (see Hearing before the Committee on the Judiciary, House of Representatives, 68th Cong., 1st sess., on H. R. 9057, p. 31) and a claim is thereafter asserted against the vessel. In such a case, if the United States, at least after notice of the claim, omitted or neglected to take over the defense under Section 4, a subsequent suit on the warranty could doubtless be brought against the Government, if the claim were upheld—and not only for the amount of the judgment, but also for the costs of the prior suit, including counsel fees. Cf. *Charles John House* v. *United States*, 39 C. Cls. 508., *Brand* v. *United States*, 5 C. Cls. 312. Any delay or failure of the Government to obtain release of the vessel might also give rise to detention damages recoverable on the warranty. Cf. *The Conqueror*, 166 U. S. 110, 125 *et seq.* The acceptance of our view would thus in fact close the one remaining gap in the desired uniformity of administration under an exclusive remedy.

The Siren the inchoate liens were mistakenly supposed to attach to merchant and "public" vessels. Section 4 was not limited in its application to merchant vessels but applied also to "public" vessels (Appendix B, pp. 44–46). Both these points were brought to the Court's attention in *The Western Maid*, involving three "public" vessels, thus opening the way for the argument that Section 4 gave legislative approval to the inchoate lien doctrine (Br. on Behalf of Hon. John C. Rose, in No. 23, Original, October Term 1921, pp. 42–45). And in the instances of two of the vessels, the United States had proceeded under Section 4 to obtain their release. Nevertheless, with Section 4 thus squarely before it, the Court held that the vessels were not liable *in rem*.

The force of this decision cannot be avoided by any suggestion that Section 4 is an indication that Section 9 of the Shipping Act was to have continued vitality as a waiver of sovereign immunity. That Section 4 was in no sense predicated upon liabilities created by Section 9 of the Shipping Act of 1916, but was designed solely to meet the problem supposed to arise from *The Siren*, is clear from the fact that Section 4 was intended to apply to a broader class of vessels than Section 9 embraced. The latter was limited to vessels "purchased, chartered, or leased from the [Shipping] board." In contrast, Section 4, was not so

limited but covers any vessel previously in the "possession, ownership, or operation" of the Government and whether as a merchant or "public" vessel. Likewise, the legislative history makes clear that Section 4 was designed to meet the situation resulting from *The Siren* and not the situation resulting from the waiver of liability in Section 9 of the Shipping Act, which was being cured by its partial repeal (see pp. 16–17, *supra*). Moreover, maritime liens are *stricti juris* and will not be extended by construction. *Plamals* v. *Pinar Del Rio*, 277 U. S. 151, 156; *Osaka Shosen Kaisha* v. *Pacific Export Lumber Co.*, 260 U. S. 490, 499; *Vandewater* v. *Mills, Claimant Steamship Yankee Blade*, 19 How. 82, 89.[9]

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[9] Nothing in *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244, is opposed to our view that the existence of lien liability should be controlled by *The Western Maid*, decided after the passage of the Suits in Admiralty Act, rather than by *The Siren*, which was decided prior to its enactment, but which was overruled in this connection by *The Western Maid*. In the *Motor Boat Sales* case, the Court was considering the construction of a statute intended to impose *affirmative* liability to the full constitutional limit delineated by prior judicial decisions; whereas the present case concerns a negative provision intended, not to impose liability, but to protect against a supposed liability, soon afterwards proved to be nonexistent. Further, in the present case *The Siren* has long since been overruled; in the *Motor Boat Sales* case the Court was there being asked to overrule long-standing precedents. Moreover, as the Court noted in that case, the rejection of the "Jensen and its companion cases" would have introduced an objectionable uncertainty as to the scope of the protection that Congress wished to provide by the "uniform compensa-

For the foregoing reasons we submit that the *Eglantine* was not subject to lien liability and that the libel *in rem* against the vessel cannot be maintained. Acceptance of our contention would place no hardship upon persons injured by Government vessels. They would have their remedy under the Suits in Admiralty Act even if no lien liability had existed.[10] Cf. *Eastern Transportation Company* v. *United States*, 272 U. S. 675.

II

PETITIONER'S LIBEL IS BARRED BY THE TWO-YEAR PERIOD OF LIMITITIONS UNDER SECTION 5 OF THE SUITS IN ADMIRALTY ACT

In the preceding section we have shown that the *Eglantine* was not liable *in rem* and that petitioner's remedy was to proceed under the Suits in Admiralty Act against the United States. In the

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tion statute" (314 U. S. at 249, 250), contemplated in the Longshoremen's and Harbor Workers' Compensation Act. In this case the whole purpose of the Suits in Admiralty Act, particularly with respect to the important matter of uniformity, would be served by following *The Western Maid* and holding that there is no lien liability.

[10] Although a limitation of liability proceeding is defensive in nature, so that the petitioner could not "recover a dollar by means of it from anybody" (*Algoma Central & Hudson Bay Ry. Co.* v. *Great Lakes Transit Corporation*, 86 F. (2d) 708, 710 (C. C. A. 2)), it could have brought a timely affirmative action for damages along with its petition for limitation of liability. See *The Albert Dumois*, 177 U. S. 240, 241–242, 255–256; *The Manitoba*, 122 U. S. 97, 98–101; *The Bleakley No. 76*, 54 F. (2d) 530 (C. C. A. 2), and 56 F. (2d) 1037 (S. D. N. Y.).

present section we assume *arguendo* that liability *in rem* exists by virtue of Section 9 of the Shipping Act of 1916 and Section 18 of the Merchant Marine Act of 1920 or under Section 4 of the Suits in Admiralty Act. We shall show that even upon that assumption the libel *in rem* must be dismissed because Section 5 of the Suits in Admiralty Act bars such a libel after a two-year period; petitioner's libel was not filed until four and one-half years after the collision (R. 1, 18–19).

Petitioner's argument on this issue is verbal. As carried into the United States Code, Section 5 requires "Suits as herein authorized" to be brought within two years after the cause of action arises (46 U. S. C. 745). Section 8, which provides for payment of judgments and arbitration awards, makes separate reference to any "judgment rendered in any suits herein authorized, and any judgment within the purview of sections 4 * * *." The instant case is a suit within the purview of Section 4 and therefore petitioner urges that it is not a "suit herein authorized."

But the argument from these words is unpersuasive of the intention of Congress because the words "herein authorized" were not its own words in this connection. As Section 5 was enacted by Congress it provided (41 Stat. 526):

> suits *as herein authorized* may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes

> of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other *suits hereunder* shall be brought within two years after the cause of action arises.[11]

Section 9 permits the arbitration, compromise, or settlement of any claim "in which suit will lie under the provisions of sections 2, 4, 7, and 10 of this Act." Manifestly, in Section 9 Congress drew no distinction between suits under Section 2 and suits under Section 4. Again, Section 12 directs the Attorney General to report to each session of Congress "the suits under this Act" in which final judgment is rendered, a provision which includes suits in which the United States assumed liability as authorized in Section 4. Plainly, therefore, Congress considered a suit like the instant case in which the United States invoked the provisions of Section 4 to be a suit

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[11] Italics added. The section was subsequently amended by Act of June 30, 1932, which added a saving clause temporarily extending the time limitation as to certain causes of action where suits in admiralty or actions at law or in the Court of Claims had been commenced prior to January 6, 1930 (date of the decision in *Johnson* v. *United States Shipping Board Emergency Fleet Corporation*, 280 U. S. 320) upon the plaintiffs' mistaken assumption that the remedy provided by the Suits in Admiralty Act was not exclusive. 47 Stat. 420. See H. Rep. 1012, 77th Cong., 1st Sess. The 1932 amendment preserved intact the body of the section as originally enacted. The matter added by the amendment has spent its effect. See Appendix, *infra*, pp. 38–39.

"under this Act". And if reliance is to be placed on the words alone it must be concluded that in Section 5 of the Act Congress included such suits in the broad term "all other suits hereunder" [*i. e.*, other than suits on causes of action arising prior to the effective date of the Act].

Broader considerations dictate the same conclusion. Section 5 is a vital substantive provision of the Act, "setting a limit to the existence of the obligation which the Act creates." *Engel* v. *Davenport*, 271 U. S. 33, 38. "The time within which the suit must be brought operates as a limitation of the liability itself as created, and not of the remedy alone. It is a condition attached to the right to sue at all. * * * Time has been made of the essence of the right, and the right is lost if the time is disregarded * * *." *The Harrisburg*, 119 U. S. 199, 214; quoted with approval in *Western Fuel Company* v. *Garcia*, 257 U. S. 233, 243; accord: *Atlantic Coast Line Railroad* v. *Burnette*, 239 U. S. 199; *Steadfast*, 1930 A. M. C. 245 (applying Section 5 of the Suits in Admiralty Act). In view of the substantive nature of the provision Congress cannot have intended Section 5 to be excluded from the broad direction in Section 4 that after the United States has filed a suggestion of interest the "cause shall proceed against the United States in accordance with the provisions of this Act."

The purpose of the Act, moreover, forbids making any such exclusion. It aimed to establish a uniform remedy. *Fleet Corp.* v. *Rosenberg Bros.*, 276 U. S. 202, 213. And "The period of time within which an action may be commenced is a material element in such uniformity of operation" (*Engel* v. *Davenport*, 271 U. S. 33, 39). If Section 5 does not apply to libels *in rem* such as petitioner asserts, there will be great and anomalous diversities. Thus, so long as the Government retained ownership, the period of limitations would be two years, for Section 5 would apply. Likewise, it would seem that Section 5 would also apply if the transfer were made to private ownership after the end of the two-year period, for there is no reason to assume that Congress intended to revive the liability. Revival of the liability would diminish the purchase price available to the Government (See p. 17; *supra*) even after all remedy against it were barred. But (petitioner argues) if the transfer is made before two years elapse after the collision, the cause of action will be barred only when it is proper to invoke the indefinite doctrine of laches.[12] A capri-

[12] That the timeliness of proceedings for the enforcement of maritime liens is ordinarily a question of laches, rather than of the applicability of limitation statutes, see *The Key City*, 14 Wall. 653; *The Everosa*, 93 F. (2d) 732 (C. C. A. 1); *The Gertrude*, 38 F. (2d) 946 (C. C. A. 5); *The Owyhee*, 66 F. (2d) 399 (C. C. A. 2); Robinson, *Handbook of Admiralty Law in the United States* (1939), § 55. *The Key*

cious intention to make the length of the period of limitation of a liability which ultimately will rest on the Government depend upon the adventitious circumstance of whether a sale occurs, and if so whether, before or after two years have elapsed, cannot be imputed to a Congress which was seeking uniformity; yet that is the necessary effect of petitioner's interpretation.

Furthermore, the House debate shows affirmatively that Congress specifically intended to place suits under Section 2 and suits under Section 4 upon the same basis and to limit the liability of the United States in each instance to suits brought within the two-year period. The following colloquy occurred among three members of the Committee on the Judiciary, [13] which reported the bill (59 Cong. Rec. 1756):

City stated the proposition as follows: "2. That no arbitrary or fixed period of time has been, or will be, established as an inflexible rule, but that the delay which will defeat such a suit must in every case depend on the peculiar equitable circumstances of that case." (14 Wall. at 660.) However, analogous local statutes of limitation, which of course are highly variable, are often considered in determining what constitutes laches. *Hughes* v. *Roosevelt*, 107 F. (2d) 901, 903 (C. C. A. 2); *Marshall* v. *International Mercantile Marine Co.*, 39 F. (2d) 551 (C. C. A. 2); *The Kermit*, 76 F. (2d) 363, 366-367 (C. C. A. 9); *McGrath* v. *Panama R. Co.*, 298 Fed. 303 (C. C. A. 5); 3 Benedict, *Admiralty* (6th ed., 1940), § 463.

[13] 58 Cong. Rec. 10; H. Rep. 497, 66th Cong., 2d sess.; Hearing before the Committee on the Judiciary, House of Representatives, 66th Cong., 1st sess., on H. R. 7124.

Mr. WALSH. Mr. Chairman, I move to strike out the last word.

This section 4 is the one that relates to vessels which have previously been operated by the United States and have since passed into private ownership. Do I understand that it is the intention now, if suit is to be brought *within two years* after a collision occurs for damages which resulted while the vessel was being operated by the United States, but after she is returned to private ownership, that the United States steps in and furnishes this stipulation and assumes the liability for the satisfaction of the decree and releases her from arrest, and so forth, just as if the United States still owned the vessel?

MR. VOLSTEAD. It is my understanding, and I presume that would save some money, instead of having the vessel tied up, with the costs incident thereto. I do not see any great necessity——

* * * * * *

Mr. HUSTED. The United States, it seems to me, would be in *exactly the same situation* as to causes of action which arose after the United States Government parted with the possession of the ships as she would be in reference to causes of action that arose while she was in possession of the ships. [Italics added.]

To achieve the uniformity intended by Congress the Court has held "that the remedies given

by the Act are exclusive in all cases where a libel might be filed under it." *Johnson* v. *United States Shipping Board Emergency Fleet Corporation* 280 U. S. 320, 327. Petitioner might have filed a libel against the United States under the Act, subject to the two-year period of limitations (*Fleet Corp.* v. *Rosenberg Bros.*, 276 U. S. 202) so that if the present libel *in rem* can be maintained it is as an exception to the general rule depending upon a statutory waiver of immunity. Such an exception to the general rule announced in the *Johnson* case should be strictly construed, particularly since it is a waiver of sovereign immunity,[14] regardless of its statutory basis; for it must be assumed that Congress intended the general rule to be applied so far as possible. Such harmony is best achieved by construing the provisions of the Act to be applicable to the suits *in rem* wherever the language permits; as we have shown above, the language not only permits but requires that result in determining the applicability of Section 5.[15]

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[14] *United States* v. *Michel*, 282 U. S. 656; *United States* v. *Sherwood*, 312 U. S. 584, 589–592.

[15] In *The Caddo*, 285 Fed. 643 (S. D. N. Y.), and *The Bascobal*, 295 Fed. 299 (C. C. A. 5), upon which petitioner places its chief reliance, the liens sustained beyond the time prescribed in Section 5 arose prior to March 9, 1920, the date of the Act's passage. Hence on their facts these cases are not necessarily in conflict with the decision below in the instant case, since it may be argued that the statute was not

We have discussed in Point I our reasons for believing that Government vessels are not liable *in rem* for their torts. In this Point II we so far have assumed *arguendo* that lien liability existed without attributing it to any particular statute. But in fact, it would seem plain that the assumption cannot be maintained under the principle of exclusiveness announced in the *Johnson* case unless the waiver of immunity is based upon Section 4 of the Suits in Admiralty Act. In that event the suit indisputably arises under the Suits in Admiralty Act and is controlled by the time limitation of Section 5.

Moreover, if Section 4 be construed as a consent to lien liability enforcible after a transfer of the vessel, it should be construed to give such consent only when the suit is brought within the two-year period specified by Section 5. Section 4 was intended to improve the marketability of Government vessels by a speedy method for procuring their release from attachment upon liens attaching prior to the transfer. In effect, Section 4

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intended to affect liens which had previously accrued under Section 9 of the Shipping Act of 1916. *Cf. United States v. St. Louis, San Francisco & Texas Railway Company*, 270 U. S. 1; *United States* v. *Magnolia Petroleum Company*, 276 U. S. 160, 162–163; *The Edna*, 185 Fed. 206, 207 (S. D. Ala.); 59 Cong. Rec. 1685. *But cf.* Hearing before the Committee on the Judiciary, House of Representatives, 66th Cong., 1st sess., on the Attorney General's Substitute for S. 3076 and H. R. 7124, pp. 9, 19–20.

simply provides a means for instituting suit against the United States where the vessel has been transferred, for to make its vessels marketable the United States must proceed under Section 4 to obtain the prompt release of vessels which it has transferred. Section 5 was intended to set at rest all liabilities of the United States unasserted for two years. Both purposes can be fulfilled only if the consent to lien liability in Section 4, which is granted as a means of instituting suit against the United States, is subject to the time limitation of Section 5 just as the consent to *in personam* liability granted in Section 2.

The logic of our position is made pointed by current conditions. During the present war, and during the preceding emergency period, the Government has been acquiring by construction, purchase and requisition hundreds of merchant vessels and will continue to do so. Unless the applicability to the present case of the two-year period of limitations is established, chaos may result when the Government restores or sells the vessels to private owners. If the vessels, in private hands, may be subjected to *in rem* suits on causes of action accrued during Government ownership, operation or possession, after the expiration of the right to sue the United States *in personam*, there will be a continuing cloud on title to the vessels.

CONCLUSION

The judgment of the United States Circuit Court of Appeals for the Fifth Circuit should be affirmed.

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Solicitor General.

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NOVEMBER 1942.

APPENDIX A

Section 9 of the Shipping Act of 1916, c. 451, 39 Stat. 728, 730, provided as follows:

> That any vessel purchased, chartered, or leased from the board may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided,* That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned, chartered, or leased by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States.
>
> Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. No such vessel, without the approval of the board, shall be transferred to a foreign registry or flag, or sold; nor, except under regulations prescribed by the board, be chartered or leased.

When the United States is at war, or during any national emergency the existence of which is declared by proclamation of the President, no vessel registered or enrolled and licensed under the laws of the United States shall, without the approval of the board, be sold, leased, or chartered to any person not a citizen of the United States, or transferred to a foreign registry or flag. No vessel registered or enrolled and licensed under the laws of the United States, or owned by any person a citizen of the United States, except one which the board is prohibited from purchasing, shall be sold to any person not a citizen of the United States or transferred to a foreign registry or flag, unless such vessel is first tendered to the board at the price in good faith offered by others, or, if no such offer, at a fair price to be determined in the manner provided in section ten.

Any vessel sold, chartered, leased, transferred, or operated in violation of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than $5,000 or to imprisonment of not more than five years, or both such fine and imprisonment.

Section 18 of the Merchant Marine Act of 1920, c. 250, 41 Stat. 988, 994 (46 U. S. C. § 808), provided as follows:

That section 9 of the "Shipping Act, 1916," is amended to read as follows:

"SEC. 9. That any vessel purchased, chartered, or leased from the board, by

persons who are citizens of the United States, may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered by the board to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States while owned, leased, or chartered by such a person.

"Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

"It shall be unlawful to sell, transfer or mortgage, or, except under regulations prescribed by the board, to charter, any vessel purchased from the board or documented under the laws of the United States to any person not a citizen of the United States, or to put the same under a foreign registry or flag, without first obtaining the board's approval.

"Any vessel chartered, sold, transferred or mortgaged to a person not a citizen of the United States or placed under a for-

eign registry or flag, or operated, in violation of any provision of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than $5,000, or to imprisonment for not more than five years, or both."[1]

The Suits in Admiralty Act of 1920, c. 95, §§ 1–13 inclusive, 41 Stat. 525–528 (46 U. S. C. §§ 741–752), provided as follows:

CHAP. 95. An Act Authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the

[1] Pursuant to Section 904 of the Merchant Marine Act, 1936, 49 Stat. 2016, this section now reads: "United States Maritime Commission" or "Commission," in lieu of "United States Shipping Board" or "Board," and so appears at 46 U. S. C. § 808.

United States or its possessions: *Provided*, That this Act shall not apply to the Panama Railroad Company.

SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

SEC. 3. That such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder. Any such bond or stipulation heretofore given in admiralty causes by the United States, the United States Shipping Board, or the United States Shipping Board Emergency Fleet Corporation, shall become void and be surrendered and canceled upon the filing of a suggestion by the Attorney General or other duly authorized law officer that the United States is interested in such cause, and assumes liability to satisfy any decree included within said bond or stipulation, and thereafter any such decree shall be paid as provided in section 8 of this Act.

SEC. 4. That if a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen from previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States, through its Attorney General or other duly authorized law officer, that it is interested in such cause, desires such release, and assumes the liability for the satisfaction of any decree obtained by the libelant in such cause, and thereafter such cause shall proceed against the United States in accordance with the provisions of this Act.

SEC. 5. That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises: [*Provided further*, That the limitations in this section contained for the commencement of suits hereunder shall not bar any suit against the United States or the United States Shipping Board Merchant Fleet Corporation, formerly known as the United States Shipping Board Emergency Fleet Corporation, brought hereunder on or before December 31, 1932, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law or an action under the Tucker Act of March 3, 1887, (24 Stat. 505; U. S. C., title 28, sec. 250, subdiv. 1), was commenced prior to January 6, 1930,

and was or may hereafter be dismissed because not commenced within the time or in the manner prescribed in this Act, or otherwise not commenced or prosecuted in accordance with its provisions: *Provided further,* That such prior suit must have been commenced within the statutory period of limitation for common-law actions against the United States cognizable in the Court of Claims: *Provided further,* That there shall not be revived hereby any suit at law, in admiralty, or under the Tucker Act heretofore or hereafter dismissed for lack of prosecution after filing of suit: *And provided further,* That no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized hereunder.] [2]

SEC. 6. That the United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.

SEC. 7. That if any vessel or cargo within the purview of sections 1 and 4 of this Act is arrested, attached, or otherwise seized by process of any court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage, or ownership of

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[2] As noted in the text *supra*, p. 22, Section 5 is carried in the United States Code as follows: "Suits as authorized in this chapter shall be brought within two years after the cause of action arises." 46 U. S. C., § 745. The matter in brackets was added by Act of June 30, 1932, c. 315, 47 Stat. 420.

any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the United States Shipping Board, or such corporation as by said court required, for the release of such vessel or cargo, and for the prosecution of any appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the United States Shipping Board, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit. The Attorney General is hereby vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its Territories and possessions, or in any foreign country, to execute any such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation. The presentation of a copy of the judgment roll in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the cer-

tificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the United States Shipping Board, or of such corporation, for the allowance and payment of such judgments: *Provided, however,* That nothing in this section shall be held to prejudice or preclude a claim of the immunity of such vessel or cargo from foreign jurisdiction in a proper case.

SEC. 8. That any final judgment rendered in any suit herein authorized, and any final judgment within the purview of sections 4 and 7 of this Act, and any arbitration award or settlement had and agreed to under the provisions of section 9 of this Act, shall, upon the presentation of a duly authenticated copy thereof, be paid by the proper accounting officers of the United States out of any appropriation or insurance fund or other fund especially available therefor; otherwise there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment or award or settlement.

SEC. 9. That the Secretary of any department of the Government of the United States, or the United States Shipping Board, or the board of trustees of such corporation, having control of the possession or operation of any merchant vessel are, and each hereby is, authorized to arbitrate, compromise, or settle any claim in which suit will lie under the provisions of sections 2, 4, 7, and 10 of this Act.

SEC. 10. That the United States, and the crew of any merchant vessel owned or operated by the United States, or such cor-

poration, shall have the right to collect and sue for salvage services rendered by such vessel and crew, and any moneys recovered therefrom by the United States for its own benefit, and not for the benefit of the crew, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of the United States Shipping Board, or of such corporation, having control of the possession or operation of such vessel.

SEC. 11. That all moneys recovered in any suit brought by the United States on any cause of action arising from, or in connection with, the possession, operation, or ownership of any merchant vessel, or the possession, carriage, or ownership of any cargo, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of the United States Shipping Board, or of such aforesaid corporation, having control of the vessel or cargo with respect to which such cause of action arises, for reimbursement of the appropriation, or insurance fund, or other funds, from which the loss, damage, or compensation for which said judgment was recovered has been or will be paid.

SEC. 12. That the Attorney General shall report to the Congress at each session thereof the suits under this Act in which final judgment shall have been rendered for or against the United States and such aforesaid corporation, and the Secretary of any department of the Government of the United States, and the United States Shipping Board, and the board of trustees of any such aforesaid corporation, shall likewise report the arbitration awards or

settlements of claims which shall have been agreed to since the previous session, and in which the time to appeal shall have expired or have been waived.

SEC. 13. That the provisions of all other Acts inconsistent herewith are hereby repealed.[1]

Approved, March 9, 1920.

[1] This provision does not appear in the United States Code.

APPENDIX B

The draftsman of the Suits in Admiralty Act testified concerning Section 4 (then Section 5) in the Hearing before the Senate Committee on Commerce, 66th Cong., 1st Sess., on S. 2253 as follows (pp. 17–18):

> Now, let me speak about section 5 before I read it. That is designed to meet this situation with which we are actually confronted today. The Shipping Board requisitioned the use of a large number of vessels. In some cases it operated those vessels under what is known as the time form of requisition charter party. Under that form the owner manned and operated the vessel and the Shipping Board had the use of the cargo space of the vessel and furnished the bunkers. In other cases we operated the vessel under bare boat form. There the Shipping Board or the Navy or War Departments took over the bare ship, manned it with its own crews, supplied and furnished it, and operated it as if it owned the vessel. Under the time form the United States assumed the war risk upon the vessel, but the owner of the vessel, being in control of her navigation, carried the marine risk. Under the bare boat form we assumed both the war risk and the marine risk.
>
> The Supreme Court has held, I think in the case of *The Siren*, that while you cannot libel a vessel in the possession of the United States for a maritime lien, nevertheless the maritime lien does arise from a

maritime casuality (*sic*), we will say, while the possession of the vessel is in the United States, but is unenforceable. The result of that decision is this: We will take an actual case that we have before us in the Department of Justice. The steamer *Frank H. Buck,* belonging to the Associated Oil Co. of California, was requisitioned by the Shipping Board under a bare boat form of charter and was turned over to the Navy Department for use as an oil tanker. While in that service she was in collision with a Standard Oil tanker, that, I believe, was under requisition by the Navy Department, but under a time form of charter party. The United States was carrying the marine risk on the *Buck,* but the owner of The Standard Oil Co. tanker was carrying the marine risk on that vessel. While the *Buck* was in the possession of the United States she could not be libeled by the Standard Oil Co., but the moment that the Shipping Board or the Navy Department delivered the *Buck* back to the Associated Oil Co. the right to enforce the lien which had arisen through the collision operation became existent, and the Standard Oil Co. libeled the *Buck* at Los Angeles. That is an illustration of the difficulty we have had. The Navy Department is liable under its arrangement with the Shipping Board for the collision damages. The contract between the Associated Oil Co. and the Government is between the Associated Oil Co. and the Shipping Board. The Navy Department said, "We have not any authority to give any bond to take care of that litigation." The Shipping Board said, "Well, it is your liability and not ours, and you are the people who should

put up the security." The result was that the owner, the Associated Oil Co., to release its vessel obtained a surety bond from a surety company, and will probably contest the suit, and then under its requisition charter party with the Shipping Board will ask the latter to perform its contract by paying not only the judgment for the collision damages but also the costs of the suit, including the premium on the bond.

This section is designed to meet that situation * * *. [Emphasis supplied.]

U. S. GOVERNMENT PRINTING OFFICE, 1942

P. 2

SUPREME COURT OF THE UNITED STATES.

No. 265.—October Term, 1942.

Clyde-Mallory Line, Petitioner, *vs.* Steamship Eglantine and the United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 4, 1943.]

Mr. Justice Black delivered the opinion of the Court.

The question in this case is whether the libel in rem brought by the petitioner against the Steamship Eglantine is barred by Sec. 5 of the Suits in Admiralty Act, 41 Stat. 525, which provides that "suits hereunder shall be brought within two years after the cause of action arises."

On December 21, 1932, while the Eglantine was being operated by the United States as a merchant vessel, it collided with the Steamship Brazos, owned by the petitioner. Four and one-half years later, after the government had sold the Eglantine to a private operator, the petitioner filed this libel in rem against the vessel and the marshal took it from the private owner under an admiralty warrant of attachment. Admiralty imposes a lien upon privately owned vessels for damages inflicted by negligent operation and provides for enforcement by proceedings against the vessels themselves.[1] In Sec. 9 of the Shipping Act of 1916, 39 Stat. 728, Congress permitted enforcement of such liens against government merchant vessels by providing that they should be "subject to all laws, regulations and liabilities governing merchant vessels" generally. The Shipping Act contained no limitation of time within which such actions must be commenced, but left that question to be decided in accordance with the general rules of laches under admiralty practice.[2] This clause was carried forward and became a part of Sec. 18 of the Merchant Marine Act of 1920. 46 U. S. C. § 808.

It is the petitioner's contention that this action in rem was authorized and controlled by Sec. 9 as amended. The government

[1] The John G. Stevens, 170 U. S. 113, 120.

[2] The Key City, 14 Wall. 653.

contends that the Suits in Admiralty Act withdrew the previous 1916 congressional consent to impose and enforce liens against vessels for injuries inflicted by government operation whether the vessels are in its possession or that of its purchasers. In addition, the government asserts that this proceeding is one under and controlled by Sec. 5 of the Suits in Admiralty Act and therefore barred because brought more than two years after the collision. The District Court ruled against the government on both these defenses under authority of *The Bascobal*, 295 F. 299. But the Circuit Court of Appeals declined to follow its former ruling in *The Bascobal*, held Sec. 5 applicable, and accordingly reversed. 127 F. 2d 569. We granted certiorari because the questions raised are important in the construction of the Suits in Admiralty Act and are in some doubt. Cf. *The Caldo*, 285 F. 643. We think the limitations of Sec. 5 of the Suits in Admiralty Act are controlling, and for that reason we find it unnecessary to consider the other defense set up by the government.

In *The Lake Monroe*, 250 U. S. 246, this Court decided that Sec. 9 of the Shipping Act of 1916 did make government merchant vessels subject to seizure under in rem proceedings. This decision however prompted Congress shortly thereafter to review and reconsider the effect of the broad powers Sec. 9 had granted.[3] The result of this review was passage of the Suits in Admiralty Act in which Congress expressly withdrew its previous consent to have its vessels subject to the laws applicable to merchant ships generally. Sec. 1 provided for their immunity from arrest or seizure by judicial process in the United States or its possessions; Sec. 2 authorized libels in personam directly against the United States for injuries inflicted by its governmental ship operations. But Congress went beyond the cases of liability for ships in the possession of the United States and made careful provision in Sec. 4 for a manner of determining governmental liability for maritime torts occurring during the period of government ownership should government vessels be transferred to private owners before suit was brought. That Section gave the government the privilege, of which it availed itself in this case, to appear as a party-defendant and assume liability, and expressly prescribed that "thereafter such cause shall proceed against the United States in accordance with the provisions of this Act." Immediately sub-

[3] Blamberg Bros. v. United States, 260 U. S. 452, 458.

sequent is the "provision of this Act" here in question: "Suits hereunder shall be brought within two years." This is as surely a provision of the Act in accordance with which the cases must be governed as is any other clause. The Suits in Admiralty Act thus prescribes a comprehensive procedural pattern designed fully to control the method by and the time within which obligations for damages inflicted by government operation of ships must be instituted and determined.

There is no question that under the Suits in Admiralty Act suits against the government for maritime torts committed by its vessels, when brought while the vessels are still in the possession of the government, are subject to the two-year limitation provision. Sec. 4 provides so closely related a method of permitting the government to meet its obligations on a maritime tort with economy and dispatch that we should be slow to construe any ambiguity in the statute to establish a separate and distinct period of limitation for it. The conclusion is inescapable that there is no practical difference between suits against the government as owner of the vessel and against the government as the party in interest when it voluntarily appears to defend its lately sold property against tort liability.

As has been noted, Sec. 9 of the 1916 Act was incorporated in the 1920 Merchant Marine Act, passed three months after the Suits in Admiralty Act. It has been suggested, although not vigorously pressed, that even if the Suits in Admiralty Act was intended to bar actions such as this, it was modified by re-enactment of Sec. 9. Congress did not, however, in passing the Merchant Marine Act, as it did in passage of the Suits in Admiralty Act, have its attention focused on this particular problem. Running through the Merchant Marine Act there appears repeated manifestation of a congressional purpose to expedite transfer of government vessels into private hands,[4] a purpose clearly compatible with the Suits in Admiralty Act which through its limitation provisions cut off lingering liens. There is nothing whatever in the 1920 Merchant Marine Act, nor, so far as has been pointed out to us, anything in its legislative history, indicating that Congress intended to repeal, alter, or amend the Suits in Admiralty Act in whole or in part. The 1920 re-enactment is not meaningless; it retains in the law that portion of the 1916 statute unaffected by

[4] 41 Stat. 988, §§-1, 5, 6, 7, 12, 19.

the Suits in Admiralty Act. It remains an expression of the basic policy of waiver of immunity by the government for maritime torts of the sort within its scope.

We hold that when the government voluntarily appears in an action authorized by Sec. 4 of the Suits in Admiralty Act, the proceedings are governed by Sec. 5 with its limitation provisions.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.